

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MICAELA GUALDARRAMA, et. al.,

Plaintiffs

v.

MARIA RIVERA ORTIZ, et al.,

Defendants

CIVIL 97-2481

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U.S. DISTRICT COURT
SAN JUAN P.R.

OPINION AND ORDER

Plaintiffs Micaela Gualdarrama (hereinafter "Gualdarrama") and her daughter, Reina Roldán (hereinafter "Roldán"), filed this civil rights action pursuant to 42 U.S.C. § 1983, claiming monetary damages, plus costs, interests and attorney's fees, as a result of the alleged violation of their rights under the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. In addition, they seek relief under Article 1802 of the Puerto Rico Civil Code. Pending before the court is an unopposed motion for judgment on the pleadings pursuant to Federal Rules of Civil Procedure 12(c) filed on November 18, 1999. (Docket No. 38.) On December 8, 1999, plaintiffs filed a motion requesting an extension of time to answer the aforementioned 12(c) motion. (Docket No. 41.) I granted that motion on December 13, 1999. (Docket No. 42.) Thereafter, defendants filed a motion for clarification of the December 13th order. (Docket No. 43.) I clarified the order by stating that the 12(c) motion would be treated by the court as a

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3 12(c) motion and not converted into a summary judgment motion, meaning that no
4 matters outside the pleadings would be considered when deciding such motion. (Docket
5 No. 44.) Thereafter, the parties attended a conference in my chambers on January 31,
6 2000. At said conference I granted plaintiffs a 30 day extension to reply to the 12(c)
7 motion, as evidenced by the report filed on February 14, 2000. (Docket No. 47.) To this
8 date, plaintiffs have failed to reply to defendants' 12(c) motion.
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10 **APPLICABLE STANDARD FOR JUDGMENT ON THE PLEADINGS**

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12 Federal Rule of Civil Procedure 12(c) allows a party, "[a]fter the pleadings are closed
13 but within such time as not to delay the trial, [t]o move for judgment on the pleadings."
14 Given that "rendition of judgment in such an abrupt fashion represents an extremely early
15 assessment of the merits of the case, the trial court must accept all of the nonmovant's well-
16 pleaded factual averments as true . . . and draw all inferences in his favor." Rivera-Gómez
17 v. Castro, 843 F.2d 631, 634 (1st Cir. 1988) (citations omitted); see also Feliciano v. Rhode
18 Island, 160 F.3d 780, 788 (1st Cir. 1998).
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21 Motions under Federal Rule of Civil Procedure 12(c) ordinarily warrant the same
22 treatment as 12(b)(6) motions, and thus "customarily evoke a generous standard of
23 appraisal." Collier v. Chicopee, 158 F.3d 601, 602 (1st Cir. 1998), cert. denied, 199 S. Ct.
24 1262 (1999) (citing Gooley v. Mobil Oil Corp., 851 F.2d 513, 514 (1st Cir. 1988)
25 (emphasizing minimal nature of requirements imposed by Rule 12(b)(6)). Under Federal
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3 Rule of Civil Procedure 12(c), judgment on the pleadings “may not be entered unless it
4 appears beyond a doubt that the nonmoving party can prove no set of facts in support of
5 her claim which would entitle her to relief.” Feliciano v. Rhode Island, 160 F.3d at 788
6 (citing Santiago de Castro v. Morales-Medina, 943 F.2d 129, 130 (1st Cir. 1991)).
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8 In light of this standard, the facts of this case, construed in the light most favorable
9 to the nonmoving party, are set forth below.
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11 FACTUAL BACKGROUND

12 The events leading to the present action occurred on October 8, 1996. Plaintiffs
13 Gualdarrama and Roldán allege that while they were leaving a relative’s apartment at the
14 “Jardines de Berwind” housing project, they were confronted by the Tactical Operations
15 Unit of the Puerto Rico Police Department. The Unit was in the midst of a so called
16 “takeover” or “invasion” of the housing project’s parking lot area, and were thus frisking
17 everyone present at the scene. (See Docket No. 1, Complaint, at ¶ 13.)
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19 Gualdarrama and Roldán claim that as they exited the hallway, co-defendant Víctor
20 Marrerro-Barrios (hereinafter “Marrerro”) forcefully shoved Roldán against a wall with his
21 baton. (Id. ¶ 14.) Plaintiffs further allege that when Roldán asked why she was being
22 pushed, defendant María Rivera-Ortiz (hereinafter “Rivera”) slammed Roldán against an
23 iron gate. (Id.) Gualdarrama, Roldán’s mother, allegedly told the police officers that
24 Roldán was a minor and as a result was struck in the back by defendant Marrerro and
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3 dropped to the floor. Both plaintiffs were then beaten by police officers Marrerro and
4 Rivera. Roldán was then handcuffed and taken to a patrol car.

5 Plaintiff Gualdarrama proceeded to complain to the police officer in charge of the
6 operation about the beating and subsequent arrest of her daughter. Gualdarrama asserts
7 that said officer did not pay attention to her, “[s]howing the deliberate indifference to civil
8 rights violations promoted by the Police Department policy of residential housing projects
9 invasions.” (Id. ¶ 15.) Instead, Gualdarrama was handcuffed and taken along with her
10 daughter to Puerta de Tierra’s Police Station where they were both kept in a cell for hours,
11 despite their need for medical treatment. (Id. ¶ 16.) Plaintiffs claim that during this entire
12 ordeal, while riding in the police patrol car, defendant Rivera “continued hitting and
13 verbally abusing plaintiffs.” (Id. ¶ 19.)

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17 At about 11:00 p.m., plaintiffs Gualdarrama and Roldán were finally taken to a
18 hospital, where it was determined that they had received trauma in multiple areas of the
19 body, including their chest, arms, and legs. X-rays of the rib area were ordered in order to
20 rule out possible fractures, and analgesics were prescribed. (Id. ¶ 17.)

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22 Thereafter, Gualdarrama and Roldán were again handcuffed by defendants Rivera
23 and Marrerro and taken before the District Attorney Elí J. López at the San Juan
24 Investigations Center. No charges were filed against plaintiffs at that time. (Id. ¶ 18.)
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3 Subsequently, however, plaintiffs Roldán and Gualdarrama claim “[t]hat in order to
4 justify their illegal conduct, defendants elaborated a false scheme, whereby they falsely
5 alleged that . . . Gualdarrama had physically attacked officer Rivera, falsely defendants gave
6 sworn statements, that led to the arrest, booking and prosecution of . . . Gualdarrama.”
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8 (Id. ¶ 22.) On April, 1, 1997, after a non-jury trial, plaintiff Gualdarrama was found not
9 guilty of said charges.

10 Plaintiffs Roldán and Gualdarrama are suing for deprivation of their constitutional
11 rights stemming from their alleged beating and subsequent detention. Gualdarrama is also
12 suing for malicious prosecution.
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14 DISCUSSION

15 No Protected Rights Alleged Under the Fifth, 16 Sixth, Eighth, and Fourteenth Amendments

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18 In their 12(c) motion, defendants seek dismissal of plaintiffs’ constitutional claims.
19 Defendants argue that plaintiffs’ claims should be dismissed because the complaint fails to
20 identify with specificity which rights have allegedly been violated by defendants. I agree
21 with the defendants’ argument in so far as it relates to the Sixth and Eighth Amendment
22 claims. Nowhere in the complaint is it evident that there is a cognizable claim under either
23 of these two constitutional amendments. However, I disagree with defendants as to the
24 viability of plaintiffs’ claims under the Fifth and Fourteenth Amendments. I find that at
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3 this early stage of the litigation, plaintiffs have pleaded enough facts to support a due
4 process claim (i.e., to be free from police brutality) under the Fourteenth Amendment
5 through which the Fifth Amendment constrains state action.
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7 In view of the aforementioned, I find that plaintiffs' claims against all defendants
8 under the Sixth and Eighth Amendments are without merit and should be **DISMISSED**.
9 However, plaintiffs' other constitutional claims¹ against all defendants in their personal
10 capacities pursuant to Count One and Two of the Complaint may proceed.
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12 **Section 1983 Claim Against Defendants Toledo and García**

13 In their 12(c) motion, defendants Pedro Toledo-Dávila (hereinafter "Toledo"), and
14 Walbert García (hereinafter "García") allege that plaintiffs' 1983 civil rights claim against
15 them should be dismissed for failure to state a claim upon which relief can be granted.
16 Defendants argue that plaintiffs have failed to identify in the complaint which federally
17 protected rights were violated by defendants Toledo and García. As mentioned in the
18 previous section, this argument is without merit at this early stage in the litigation.
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21 To state a claim under 42 U.S.C. § 1983, plaintiffs Gualdarrama and Roldán must
22 make two showings: "the existence of a federal or statutory right; and a deprivation of that
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24 ¹ The plaintiffs have set forth enough facts to substantiate a claim under section
25 1983 for the alleged violation of their rights under the Fourth, Fifth and Fourteenth
26 Amendments of the United States Constitution.

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3 right by a person acting under color of state law.” Barrios-Velázquez v. Asociación de
4 Empleados del Estado Libre Asociado de Puerto Rico, 84 F.3d 487, 491 (1st Cir. 1996)
5 (citing Watterson v. Page, 987 F.2d 1, 7 (1st Cir. 1993)). In this circuit, a section 1983
6 claim must “at least set forth minimal facts, not subjective characterizations, as to who did
7 what to whom and why.” Dewey v. University of New Hampshire, 694 F.2d 1, 3 (1st Cir.
8 1982), cert. denied, 461 U.S. 944 (1983).

10 The Supreme Court has emphasized that a section 1983
11 plaintiff must allege a violation of a clearly established right
12 secured either by the Constitution or by some other federal law.
13 . . . The right to be free from unreasonable seizure (and, by
14 extension, unjustified arrest and detention) is clearly established
15 in the jurisprudence of the Fourteenth Amendment (through
16 which the Fourth Amendment constrains state action). The
17 right to due process of law (and, by extension to be free from
police brutality) is likewise clearly established under the
Fourteenth Amendment (through which the Fifth Amendment
constrains state action).

18 Camilo-Robles v. Hoyos, 151 F.3d 1, 6 (1st Cir. 1998) (citing County of Sacramento v.
19 Lewis, 523 U.S. 833, 841 n.5, 118 S. Ct. 1708, 1714 n.5 (1998)). Plaintiffs have set forth
20 enough facts in their complaint to establish the possible violation of their existing federally
21 protected rights.

23 In addition, Toledo and García argue that dismissal of the section 1983 claim is
24 warranted for lack of a casual connection between the alleged constitutional violation and
25 their role as supervisors. The First Circuit has emphasized that supervisors “may be found
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3 liable only on the basis of [their] own acts or omissions.” Febus-Rodríguez v. Betancourt-
4 Lebrón, 14 F.3d 87, 91-92 (1st Cir. 1994) (citing Bowen v. Manchester, 966 F.2d 13, 20
5 (1st Cir. 1992)). In addition, “a supervisor’s acts or omissions must amount to a reckless
6 or callous indifference to the constitutional rights of others.” Febus-Rodríguez v.
7 Betancourt-Lebrón, 14 F.3d at 92 (citing Gutiérrez-Rodríguez v. Cartagena, 882 F.2d 553,
8 562 (1st Cir. 1989)). “An official displays such reckless or callous indifference when it
9 would be manifest to any reasonable official that his conduct was very likely to violate an
10 individual’s constitutional rights. . . . [In addition], there must be an ‘affirmative link’
11 between the supervisory official’s acts or omissions and his subordinate’s violation of the
12 plaintiff’s constitutional rights.” Febus-Rodríguez v. Betancourt-Lebrón, 14 F.3d at 92
13 (citing Germany v. Vance, 868 F.2d 9, 18 (1st Cir. 1989); Gutiérrez-Rodríguez v.
14 Cartagena, 882 F.2d at 562; Lipsett v. University of Puerto Rico, 864 F.2d 881, 902 (1st
15 Cir. 1988)).

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19 Seeking refuge under the principles of “supervisory liability” law, Toledo and García
20 assert that due to their lack of personal involvement in the alleged confrontation between
21 plaintiffs and police officers Rivera and Marrerro, they cannot be held responsible for the
22 officers’ alleged conduct merely because of their role as supervisors. Defendants Toledo
23 and García made this same argument in their 12(b)(6) motions (Dockets No. 9 and 10)
24 which the court denied as to the particular issue of supervisory liability. (Docket No. 19.)
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3 I agree with the previous decision of the court which stated: "Based on the foregoing, the
4 Court believes that, viewing the facts presented in the pleadings and drawing all inferences
5 in favor of plaintiffs, the complaint does state a claim colorable enough to comply with the
6 requirements of Rule 8(a) of the Federal Rules of Civil Procedure, to wit: that both
7 defendants had the power, right, and duty to control the manner in which these police
8 officers behaved, and that they established and fostered a policy of deliberate indifference
9 to civil rights in the so-called 'invasions' of residential housing projects, which led to the
10 violations of plaintiffs' civil rights." (Docket No. 18, page 6.) Therefore, defendants' 12(c)
11 motion to dismiss plaintiffs' civil rights claim against defendants Toledo and García is
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14 **DENIED.**

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16 **Malicious Prosecution**

17 In their motion for judgment on the pleading, defendants seek dismissal of plaintiff
18 Gualdarrama's claim for malicious prosecution. Defendants argue that there is no
19 substantive due process right to be free from malicious prosecution. Defendants are correct
20 in so far as the Supreme Court has stated "that a section 1983 claim alleging malicious
21 prosecution cannot be predicated on substantive due process considerations." Félix-
22 Santana v. Vélez, 890 F. Supp. 65, 66 (D.P.R. 1995) (citing Albright v. Oliver, 510 U.S.
23 266 (1994)). However, "state actors who pursue malicious prosecutions against others may
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3 be held to have violated the Fourth Amendment, thereby risking the imposition of liability
4 under 42 U.S.C. § 1983.” Britton v. Maloney, 196 F.3d 24, 28 (1st Cir. 1999).

5 Plaintiff Gualdarrama fails to identify in the complaint which constitutional theory
6 underlies her section 1983 malicious prosecution claim. Indeed, it is unclear from a reading
7 of the complaint whether plaintiff intended to bring her malicious prosecution claim under
8 section 1983 or as a supplemental claim couched on state law.² Moreover, plaintiff
9 Gualdarrama has missed the opportunity to clarify for this court the basis for her malicious
10 prosecution claim by failing to respond to defendants’ 12(c) motion. Even under the liberal
11 standard of review applied in 12(c) motions, I find that Gualdarrama has failed to state a
12 viable claim for malicious prosecution. I thus **DISMISS** Count II of the complaint for
13 failure to state a claim for which relief can be granted.
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17 Unnamed Defendants

18 Defendants are moving to dismiss plaintiffs’ action against the unnamed defendants
19 John Doe and Richard Doe, for failure to serve summons within the time required under
20 Federal Rule of Civil Procedure 4(j). “[T]he evident purpose of Rule 4(j) [is] to compel
21 parties and their counsel to be diligent in prosecuting causes of action.” Carmona-Pacheco
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24 ² The fact that plaintiff makes mention of Article 1802 of the Civil Code of
25 Puerto Rico (Puerto Rico’s general tort statute) suggests that she might have intended to
26 bring the malicious prosecution claim as a supplemental claim.

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3 v. Betancourt y Lebrón, 820 F. Supp. 45, 46 (D.P.R. 1993) (citing United States v. Ayer,
4 857 F.2d 881, 884 (1st Cir. 1988)). Even though the unnamed defendants are by
5 definition unable to move for the dismissal of a case against them, the court has the power
6 to dismiss *sua sponte*. Federal Rule of Civil Procedure “15(c)(3) allows the amendment of
7 a pleading to name an unnamed party to relate back to the date of the original pleading,
8 but only if it is ‘within the period provided by Rule 4(j) for service of the summons and
9 complaint.’ The structure of Rule 15(c) makes clear that the federal rules contemplated
10 the dismissal of an action against an unnamed party under Rule 4(j).” Carmona-Pacheco
11 v. Betancourt y Lebrón, 820 F. Supp. at 46. In the instant case, the complaint was filed
12 on October 7, 1997, much more than 120 days ago. Therefore, I hereby **DISMISS** the
13 cause of action against fictitious defendants John Doe and Richard Doe **WITHOUT**
14 **PREJUDICE**.

18 CONCLUSION

19 Defendants’ motion for judgment on the pleadings (Docket No. 38) is **GRANTED**
20 **IN PART** and **DENIED IN PART**. Plaintiffs’ claims under the Sixth and Eighth
21 Amendments are **DISMISSED** for failure to state a cognizable claim upon which relief can
22 be granted. The claims against the fictitious defendants John Doe and Richard Doe are
23 **DISMISSED WITHOUT PREJUDICE**. However, plaintiffs section 1983 against
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3 defendants Toledo and García may proceed. Finally, plaintiff Gualdarrama's claim of
4 malicious prosecution is **DISMISSED**.

5 In San Juan, Puerto Rico, this 20th day of April, 2000.

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8 JUSTO ARENAS
United States Magistrate Judge
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